

Steven M. BESSETTE
Appl. No. 10/014,797
February 23, 2004

Attorney Docket No. 4380.105

REMARKS/ARGUMENTS

Claims 1, 7-9, 17, 20 and 140-145 are pending. Solely in an effort to advance prosecution and encompass infringing subject matter, claims 1, 2, 7-9 and 20 are amended and claims 140-145 are added. Claims 2-6, 10-16, 18, 19, and 21-139 are canceled without prejudice or disclaimer of the subject matter they contain. Applicants reserve the right to file continuing applications to cover disclosed subject matter not encompassed by the currently pending claims. No new matter has been added.

RESTRICTION REQUIREMENT

The Office Action has rejoined Groups III and Group V with previously elected Group I. Applicants are grateful for this accommodation to avoid unnecessary delay and duplicative examination. The Office Action has made final the previously imposed restriction requirement, as modified above. Solely in an effort to advance prosecution, Applicants have canceled the remaining withdrawn claims.

REJECTION UNDER 35 U.S.C. § 112

The Office Action rejects claims 1, 2, 5-9, 12-17, 20-22, 122, 123 and 126 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention. In particular, the Office Action alleges that the rejected claims are indefinite because the differences in meaning between the claimed components as "acceptable carrier" and "diluent" are uncertain in the claimed invention in the lack of definitions. In addition, the Office Action alleges that claims 8,

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9, 14, 15, 16 and 22 are indefinite with respect to the claimed amounts and ratios. In response, Applicants have amend the pending claims to overcome this rejection. Favorable reconsideration and withdrawal of this rejection are respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 102(b)

The Office Action rejects claims 1 and 2 under 35 U.S.C. § 102(b) as being allegedly anticipated by Inazuka et al.(1982a). The Office Action states that Inazuka discloses a pesticidal composition comprising rosemary oil as a sole active ingredient and a paper disk as a carrier, and that rosemary oil is effective as a mosquito repellent. Applicants respectfully traverse this rejection.

Applicants respectfully submit that Inazuka does not disclose or suggest a pesticidal composition containing a pesticidally effective amount of rosemary oil **and** wintergreen oil, as in the claimed invention. Thus, reconsideration and withdrawal of this rejection are respectfully requested.

The Office Action rejects claims 5 and 6 under 35 U.S.C. § 102(b) as being allegedly anticipated by Watanabe et al. (U.S. Pat. No. 4,379,168). The Office Action states that Watanabe discloses a pesticidal composition comprising wintergreen oil as a sole active ingredient and a paper disk or a petri dish as a carrier. Applicants respectfully traverse this rejection.

Applicants respectfully submit that Watanabe does not disclose or suggest a pesticidal composition containing a pesticidally effective amount of wintergreen oil **and** rosemary oil, as in the claimed invention. Nevertheless, claims 5 and 6 are canceled, thereby rendering this rejection moot.

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The Office Action rejects claims 1, 2, 5, 6, 7, 12, 13, 20, 21, 122, 123 and 126 under 35 U.S.C. § 102(b) as being allegedly anticipated by DE 524 383. The Office Action states that DE 524 383 teaches a pesticidal composition for combating cockroaches, bugs, etc., wherein the composition comprises rosemary oil, wintergreen oil and mineral oil (petroleum). Applicants respectfully traverse this rejection.

DE 524 383 discloses that rosemary oil and wintergreen oil are mixed with several other oils, such as linseed oil, anisole, turpentine oil, lemon oil, etc., to obtain a composition for combating cockroaches, bugs, etc. DE 524 383, however, does not teach a pesticidal composition having the combination of features required by the claimed invention. Thus, reconsideration and withdrawal of this rejection are respectfully requested.

REJECTION UNDER 35 U.S.C. § 103(a)

The Office Action rejects claims 1, 2, 5-9, 12-17, 20-22, 122, 123 and 126 under 35 U.S.C. § 103(a) as being allegedly unpatentable over DE 524 383 taken with the references by Inazuka, Watanabe, U.S. Pat. No. 4,379,168 (Dotolo), U.S. Pat. No. 6,004,569 (Bessette) and U.S. Pat. No. 5,496,857 (Targosz). Applicants respectfully traverse this rejection.

The deficiencies of DE 524 383, Inazuka and Watanabe are noted above. Neither Dotolo, Bessette nor Targosz, alone or improperly combined, remedy the deficiencies of DE 524 383, Inazuka or Watanabe because they would not have taught, suggested or provided any motivation to one of ordinary the art to obtain the combination of features required by the claimed invention. Thus, reconsideration and withdrawal of this rejection are respectfully requested.

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CONCLUSION

If anything further could be done to place the above-captioned patent application in better condition for allowance (i.e., via Examiner's Amendment), then please contact the undersigned attorney at the telephone number listed below.

Please grant any extension(s) of time deemed necessary for entry of this communication. The Commissioner is hereby authorized to charge any deficiency in the small-entity fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper filed hereafter) to Deposit Account No. 14-1140. Please credit any overpayment of fees to such Deposit Account.

Respectfully submitted,

NIXON & VANDERHYE P.C.

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this document (including any paper referred to as being attached or enclosed) is being sent to the U.S. Patent and Trademark Office via facsimile transmission to (703) 872-9306 on the date indicated below, with a coversheet addressed to Commissioner for Patents, U.S. Patent and Trademark Office, Washington, D.C., 20231.

Date: February 23, 2004

By: 
Willem F. Gadiano, Registration No. 37,136